**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**APPELLATE SIDE**

**ARBITRATION APPEAL NO. 23 OF 2006**

Mrs. Sharifa Mohd. Sayeed Raut,
Deceased leaving behind her heirs &
legal representatives:
(a) Mohammad Ayyub Sayeed Raut & Ors. .. Appellants

Versus

Mr. Akil A. Latif Naik & Anr. .. Respondents

Mr. M.D.Angal for the Appellants.

CORAM: D.K.DESHMUKH,J.

DATE : 9th August,2006.

P.C.

1. By this Appeal, the Appellants challenge the order passed by the Joint District Judge, Thane, dismissing the Application filed under Section 34 of the Arbitration & Conciliation Act, 1996, by which the Appellants challenged the Award dated 13th July, 2005.

2. In nutshell, the Award is that the contract between the parties became void because the land became subject to the CRZ Regulation and, therefore, the amount of Rs.8 lakhs which was paid by the Respondents to the Appellants has been directed to be

refunded. The first ground urged before me was with regard to limitation. On a perusal of the Application filed under Section 34 of the Act, it is found that ground has not been raised before the Court. Therefore, in the Appeal, that ground cannot be allowed to be raised. The second submission was that the Court has not found that the Appellants were negligent in performing their obligation under the contract. Therefore refund could not have been ordered. In my opinion, once it is an admitted position between the parties that the contract became void because of the land being subject to CRZ Regulation, then the Appellants cannot retain the benefits received by them under the contract which has become void and therefore the Appellants were rightly directed to return those benefits.

3. I do not see any illegality either in the Award or in the order passed by the learned District Judge.

The Appeal is, therefore, dismissed.

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(D.K.DESHMUKH,J.)